

APPENDIX G Agency Comment Letters

Federal Government Letters

Department of the Army, Corps of Engineers May 26, 2006 Advisory Council on Historic Preservation August 11, 2006

(Also See Chapter V)

Missouri Government Letters

Missouri Department of Transportation June 15, 2006 Missouri Department of Transportation August 1, 2006 Missouri Department of Natural Resources October 30, 2006

(Also See Chapter V)

DEPARTMENT OF THE ARMY



KANSAS CITY DISTRICT, CORPS OF ENGINEERS 700 FEDERAL BUILDING KANSAS CITY, MISSOURI 64106-2896

REPLY TO ATTENTION OF:

May 26, 2006

Regulatory Branch (200400768) (Jackson/Clay, MO, Missouri River)

Ms. Laura Ruman Missouri Department of Transportation Post Office 270 Jefferson City, Missouri 65102

Dear Ms. Ruman:

This letter is in response to your request for a jurisdictional determination on the Interstate Highways 29/35 corridor, including the Paseo Bridge, located in Jackson and Clay Counties, Missouri. Your request has been assigned Regulatory File No. 200400768. Please reference our file number on any correspondence to us or to other interested parties concerning this matter.

The Corps of Engineers has jurisdiction over all waters of the United States. Discharges of dredged or fill material in waters of the United States, including wetlands, require prior authorization from the Corps under Section 404 of the Clean Water Act (33 USC 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403). The implementing regulations for these Acts are found at 33 CFR 320-330.

We have completed our review of the preliminary jurisdictional report and we have determined that the following areas are waters of the United States and are regulated under the authority of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. The jurisdictional stream channels include stream channels 1a and 1b(unnamed tributary of stream 2), stream 2 (North Hillside Drainage Ditch) and stream 3 (Missouri River) as identified in the jurisdictional summary report dated March 2006. In addition, we have determined that the three identified wetland areas are considered isolated and not directly connected to a water of the United States. Therefore, they are no longer regulated under the authority of the Clean Water Act. We concur with the determination that the forested riparian area, adjacent to and along the Missouri does not meet wetland criteria.

This letter is the Kansas City District's notification to you that we have completed an approved jurisdictional determination for the subject property. Our determination is based on

the information available to us at the time of our review and is valid for a period of five years from the date of this letter unless: 1) new information warrants revision of our jurisdictional determination before the five-year expiration date; or 2) the District Engineer identifies, after public notice and comment, that the site is located within a geographic area with rapidly changing environmental conditions, which merit verification on a more frequent basis.

The enclosed Jurisdictional Determination form describes the type(s) and extent of "waters of the United States" on the property. The enclosed Notification of Administrative Appeal Options and Process and Request for Appeal form (FORM) describes your options in Section I, Part D of the FORM. If you choose to appeal our determination and request reconsideration based on new information (information not available to us during our evaluation), you should complete Section II of the enclosed FORM and return the FORM to this office. If you choose to appeal but do not base your appeal on new information, please submit the completed FORM directly to U.S. Army Corps of Engineers, Commander, Northwestern Division (ATTN: CENWD-CM-OR), 12565 West Center Road, Omaha, NE 68144-3869.

In addition to our jurisdictional determination, we have reviewed the information furnished and determined that the varying activities associated with the project may be authorized by existing Nationwide Permits (NWP). The following nationwide permits (NWP No. 6, No. 13, No. 14, No. 15, and No. 33) would provide authorization to complete the project as long as the impacts to waters of the United States do not exceed the threshold authorized by the NWP both singularly and cumulatively. A summary sheet of each NWP listed above is provided for your information and for the information of the design teams.

If you have any questions concerning this letter, please feel free to contact me at 816-389-3657 (FAX 816-389-2032).

Sincerely,

Douglas R. Berka

Regulatory Project Manager

Ze R. B.L

Enclosures

Copies Furnished:

Federal Highway Administration w/enclosures

Environmental Protection Agency, Watershed Planning and Implementation Branch wo/enclosures

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Missouri Department of Transportation		File Number: 200400768	Date: May 26, 2006
Attached is:			See Section below
17.7	A. INITIAL PROFFERED PERMIT (Standar	d Permit or Letter of Permission)	A
	B. PROFFERED PERMIT (Standard Permit of	or Letter of Permission)	В
	C. PERMIT DENIAL		С
X	D. APPROVED JURISDICTIONAL DETERMINATION		D
	E. PRELIMINARY JURISDICTIONAL DETERMINATION		E

SECTION I - The following identifies your rights and options regarding a modification, reconsideration, or administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/inet/functions/cw/cecwo/reg or Corps regulations at 33 CFR Part 331.

- A: INITIAL PROFFERED PERMIT: You may accept or request modification of the permit.
- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the <u>District Engineer</u> for final
 authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your
 signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights
 to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- REQUEST MODIFICATION: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the <u>District Engineer</u>. Your objections must be received by the <u>District Engineer</u> within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the <u>District Engineer</u> will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the <u>District Engineer</u> will send you a proffered permit for your reconsideration, as indicated in Section B below.
- B: PROFFERED PERMIT: You may accept or appeal the permit.
- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the <u>District Engineer</u> for final
 authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your
 signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights
 to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the <u>Division Engineer</u> (address on page 2). This form must be received by the <u>Division Engineer</u> within 60 days of the date of this notice.
- C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the <u>Division Engineer</u> (address on page 2). This form must be received by the <u>Division Engineer</u> within 60 days of the date of this notice.
- D: APPROVED JURISDICTIONAL DETERMINATION: You may accept the approved JD, appeal the approved JD, or submit new information and request reconsideration of the approved JD.
- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the <u>Division Engineer</u> (address on page 2). This form must be received by the <u>Division Engineer</u> within 60 days of the date of this notice.
- RECONSIDERATION BASED ON NEW INFORMATION: You may submit new information to the <u>District Engineer</u> for reconsideration of an approved JD. You must submit the information within 60 days of the date of this notice.
- E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II –Fill out this section and return this form to the appropriate office only if submitting a request for modification or reconsideration to the District Engineer, or if submitting a request for Administrative Appeal to the Division Engineer. All such submittals must be made within 60 days of the date of this notice. Submit the following requests to the District Engineer A. Modification of an INITIAL PROFFERED PERMIT (Item A). D. Reconsideration of an APPROVED JURISDICTIONAL DETERMINATION based on NEW INFORMATION (Item D RECONSIDERATION). Submit the following requests to the Division Engineer B. Administrative Appeal of a PROFFERED PERMIT (Item B). C. Administrative Appeal of a PERMIT DENIAL (Item C). D. Administrative Appeal of an APPROVED JURISDICTIONAL DETERMINATION (Item D APPEAL) (for reasons other than reconsideration of an approved JD based on new information). (Note: Preliminary Jurisdictional Determinations (Item E) are not appealable. If you have concerns regarding a preliminary Jurisdictional Determination, you can request an approved Jurisdictional Determination). REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.) SUBMITTAL OF NEW OR ADDITIONAL INFORMATION: The District Engineer may accept and consider new information if you request a modification to an initial proffered permit (Part A), or a reconsideration of an approved JD (Part D). An administrative appeal to the Division Engineer is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the administrative record. However, you may provide additional information to clarify the location of information that is already in the administrative record. POINT OF CONTACT FOR QUESTIONS OR INFORMATION: If you have questions regarding this decision and/or the appeal If you wish to submit an appeal or have questions regarding the process you may contact: appeal process you may contact: DISTRICT ENGINEER DIVISION ENGINEER Attn: Joseph S. Hughes Attn: Mores V. Bergman **Chief Regulatory Branch** Appeal Review Officer

601 East 12th Street, Room 706
Kansas City, MO 64106-2896
Telephone: 816-983-3990
(Use this address for submittals to the District Engineer)

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Date:

Telephone number:

U.S. Army Engineer Division, Northwestern Division

U.S. Army Engineer District, Kansas City

Signature of appellant or agent.

JURISDICTIONAL DETERMINATION

U.S. Army Corps of Engineers

DISTRICT OFFICE: Kansas City District (CENWK) FILE NUMBER: 200400768 PROJECT LOCATION INFORMATION: State: Missouri Jackson/Clay County: Center coordinates of site (latitude/longitude): Lat. 38-54-38.0880 N., Long. 94-38-10.7880 W. Approximate size of area (parcel) reviewed, including uplands: Approx. 142 acres. Name of nearest waterway: Missouri River Name of watershed: Missouri River JURISDICTIONAL DETERMINATION Completed: Desktop determination Date: Site visit(s) X Date(s): April 21, 2006 Jurisdictional Determination (JD): Preliminary JD - Based on available information, there appear to be (or) there appear to be no "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331). Approved JD – An approved JD is an appealable action (Reference 33 CFR part 331). Check all that apply: Market There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 0.12 acres. Matter There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 0.06 acre. There are "isolated, non-navigable; intra-state waters or wetlands" within the reviewed area. Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No

BASIS OF JURISDICTIONAL DETERMINATION:

Jurisdiction.

A.	Waters defined under 33 CFR part 329 as "navigable waters of the United States": The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
В.	Waters defined under 33 CFR part 328.3(a) as "waters of the United States":
	(1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in
	interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
	(2) The presence of interstate waters including interstate wetlands ¹ .
	(3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats,
	sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or
	destruction of which could affect interstate commerce including any such waters (check all that apply):
	(i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
	(ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
	(iii) which are or could be used for industrial purposes by industries in interstate commerce.
	(4) Impoundments of waters otherwise defined as waters of the US.
	(5) The presence of a tributary to a water identified in (1) – (4) above.
	(6) The presence of territorial seas.
	(7) The presence of wetlands adjacent ² to other waters of the US, except for those wetlands adjacent to other wetlands.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above). If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination: The tributary and the diversion ditch, constructed to divert stream flows away from the floodplain, are connected to the Missouri River.

	eral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329) Ordinary High Water Mark indicated by: □ clear, natural line impressed on the bank □ the presence of litter and debris □ changes in the character of soil □ destruction of terrestrial vegetation □ shelving □ other: □ other: □ High Tide Line indicated by: □ oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics tidal gages other:
	Mean High Water Mark indicated by: ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.
	Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:
Bas	The reviewed area consists entirely of uplands. Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7). Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3). The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States: Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3. Artificially irrigated areas, which would revert to upland if the irrigation ceased. Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing. Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons. Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a). Isolated, intrastate wetland with no nexus to interstate commerce. Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
	Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale: Other (explain):
\boxtimes	Maps, plans, plots or plat submitted by or on behalf of the applicant. Data sheets prepared/submitted by or on behalf of the applicant. This office concurs with the delineation report, dated March 2006, prepared by (company): HNTB Corp. This office does not concur with the delineation report, dated March 2006, prepared by (company): Data sheets prepared by the Corps. Corps' navigable waters' studies: U.S. Geological Survey Hydrologic Atlas: U.S. Geological Survey 7.5 Minute Topographic maps: U.S. Geological Survey 15 Minute Historic quadrangles: U.S. Geological Survey 15 Minute Historic quadrangles: U.S. Geological Survey 15 Minute Historic quadrangles: U.S. Hinter Historic quadrangles: U.S. Hin

¹Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

²The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

Nationwide Permit No. 6 Survey Activities

Survey activities including core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, soil survey and sampling, and historic resources surveys. Discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration is not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads, pads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling muds and cuttings may require a permit under Section 402 of the Clean Water Act. (Sections 10 and 404)

Nationwide Permit No. 13 Bank Stabilization

Bank stabilization activities necessary for erosion prevention provided the activity meets all of the following criteria:

- a. No material is placed in excess of the minimum needed for erosion protection;
- b. The bank stabilization activity is less than 500 feet in length;
- c. The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line;
 - d. No material is placed in any special aquatic site, including wetlands;
- e. No material is of the type, or is placed in any location, or in any manner, so as to impair surface water flow into or out of any wetland area;
- f. No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,
 - g. The activity is part of a single and complete project.

Bank stabilization activities in excess of 500 feet in length or greater than an average of one cubic yard per running foot may be authorized if the permittee notifies the District Engineer in accordance with the "Notification" general condition and the District Engineer determines the activity complies with the other terms and conditions of the NWP and the adverse environmental effects are minimal both individually and cumulatively. This NWP may not be used for the channelization of a water of the United States. (Sections 10 and 404)

Nationwide Permit No. 14 Linear Transportation Crossings

Activities required for the construction, expansion, modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, and airport runways and taxiways) in waters of the United States, including wetlands, provided the activity meets the following criteria:

- a. This NWP is subject to the following acreage and linear limits:
- (1) For public linear transportation projects in non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than 1/2 acre of waters of the United States;
- (2) For public linear transportation projects in tidal waters or non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than 1/3 acre of waters of the United States and the length of fill for the crossing in waters of the United States does not exceed 200 linear feet, or;
- (3) For private linear transportation projects in all waters of the United States, provided the discharge does not cause the loss of greater than 1/3 acre of waters of the United States and the length of fill for the crossing in waters of the United States does not exceed 200 linear feet;
- b. The permittee must notify the District Engineer in accordance with General Condition 13 if any of the following criteria are met:
- (1) The discharge causes the loss of greater than 1/10 acre of waters of the United States; or
 - (2) There is a discharge in a special aquatic site, including wetlands;
- c. The notification must include a compensatory mitigation proposal to offset permanent losses of waters of the United States to ensure that those losses result only in minimal adverse effects to the aquatic environment and a statement describing how temporary losses of waters of the United States will be minimized to the maximum extent practicable;
- d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of the affected special aquatic sites;
 - e. The width of the fill is limited to the minimum necessary for the crossing;
- f. This permit does not authorize stream channelization, and the authorized activities must not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more than minimal degradation of water quality of any stream (see General Conditions 9 and 21);

Nationwide Permit No. 14 Linear Transportation Crossings (cont'd)

- g. This permit cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars; and
- h. The crossing is a single and complete project for crossing a water of the United States. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects) the Corps will consider whether it should use its discretionary authority to require an individual permit. (Sections 10 and 404)

Note: Some discharges for the construction of farm roads, forest roads, or temporary roads for moving mining equipment may be eligible for an exemption from the need for a Section 404 permit (see 33 CFR 323.4).

Nationwide Permit No. 15 U.S. Coast Guard Approved Bridges

Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments foundation seals, piers and temporary construction and access fills provided such discharges have been authorized by the USCG as of the bridge permit. Causeways and approach fills are not included in this NWP and will require an individual or regional Section 404 permit. (Section 404)

Nationwide Permit No. 33 Temporary Construction, Access and Dewatering

Temporary structures, work and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard, or for other construction activities not subject to the Corps or U.S. Coast Guard regulations.

Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials, and placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if it is determined by the District Engineer that it will not cause more than minimal adverse effects on aquatic resources. Temporary fill must be entirely removed to upland areas, or dredged material returned to its original location, following completion of the construction activity, and the affected areas must be restored to the pre-project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas so as to change their use.

Structures left in place after cofferdams are removed require a Section 10 permit if located in navigable waters of the United States. (See 33 CFR 322). The permittee must notify the District Engineer in accordance with the "Notification" general condition. The notification must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources. The District Engineer will add special conditions, where necessary, to ensure that adverse environmental effects are minimal. Such conditions may include: Limiting the temporary work to the minimum necessary; requiring seasonal restrictions; modifying the restoration plan; and requiring alternative construction method (e.g., construction mats in wetlands where practicable). (Sections 10 and 404)



August 11, 2006

Ms. Peggy J. Casey, P.E. Environmental Projects Engineer Federal Highway Administration 3220 W. Edgewood, Suite H Jefferson City, Missouri 65109

Re: I-29/35 Reconstruction and Widening, Paseo Bridge Replacement

Jackson and Clay Counties, Missouri MoDOT Job No. J4I1507, IM-29-1(103)

Dear Ms. Casey:

On July 11, 2006, the Advisory Council on Historic Preservation (ACHP) received your notification and supporting documentation regarding the adverse effects of the referenced undertaking on properties eligible for inclusion in the National Register of Historic Places. Based upon the information you provided, we have concluded that Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, of our regulations, "Protection of Historic Properties" (36 CFR Part 800), does not apply to this undertaking. Accordingly, we do not believe that our participation in the consultation to resolve adverse effects is warranted. However, should circumstances change and you or other consulting parties determine that our participation is required, please notify us.

We note that FHWA's adverse effect finding for this undertaking is based on the proposed major rehabilitation or demolition of the historic Paseo Bridge. However, the documentation does not indicate any consideration of the potential adverse visual effects of the new bridge on other historic properties within the Area of Potential Effect (APE). We recognize that such a consideration may be premature, because very little is currently known regarding the aesthetic design of the new bridge. However, since you reported that many members of the public have expressed concern regarding the aesthetic design of the new bridge, we would like to recommend that FHWA, the Missouri State Historic Preservation Office (SHPO), and any other consulting parties consider including a provision for design review of the new bridge at appropriate intervals during the design-build process in the Memorandum of Agreement (MOA) for the undertaking. Such a provision will ensure that consideration of currently unknown effects on historic properties within the APE are taken into account and resolved.

We also suggest that FHWA invite a broader representation of stakeholders to participate in the consultation to resolve adverse effects. For example, the Kansas City Preservation Planner, property owners of the other historic properties within the APE, or other neighborhood or

business district organizations could provide input that could help FHWA avoid or minimize potential adverse visual effects on the surrounding historic properties. In addition, such parties should have a role in the design review process.

Pursuant to 36 CFR 800.6(b)(1)(iv), you will need to file the final MOA, developed in consultation with the Missouri SHPO and other consulting parties, and related documentation at the conclusion of the consultation process. The filing of this MOA with the ACHP is required to complete your compliance responsibilities under Section 106 of the National Historic Preservation Act.

Thank you for providing us with your notification of adverse effect. If you have any questions or require the further assistance, please contact me at (202) 606-8520 or kharris@achp.gov.

Sincerely,

Katry Harris

Historic Preservation Specialist Office of Federal Agency Programs

Katry Harri

Missouri Department of Transportation



105 West Capitol Avenue P.O. Box 270 Jefferson City, MO 65102 (573) 751-2551 Fax (573) 751-6555 www.modot.org

Pete K. Rahn, Director

June 15, 2006

Mr. Charlie Scott
U.S. Fish and Wildlife Service
Columbia Field Office
101 Park DeVille Drive, Suite A
Columbia, MO 65203

Dear Mr. Scott:

Subject:

Design - Environmental Section

Route I-29/I-35 Jackson/Clay County

Job No. J4I1507

Section 7 Endangered Species Act Coordination

The Missouri Department of Transportation (MoDOT) is planning to build a new bridge over the Missouri River in Kansas City, Missouri immediately downstream of the existing Interstate 29/35 ("Paseo") Bridge. This is part of a larger improvement project for "The Paseo" from Route 210 to the north end of the downtown Kansas City, MO loop. It is not known at this time if the new bridge will be a companion to the existing, with parallel pier placements, or if a larger structure will be built and the existing bridge demolished. If the existing bridge will not remain in place, it will need to be demolished fairly soon after the new one is completed. An Environmental Impact Statement (EIS) is currently being finalized for this project and the Record of Decision is due to be signed at the end of August 2006.

The EIS mention that pallid sturgeon (*Scaphirynchus albus*) has the potential to occur in the project area. The EIS only addresses the construction of the new bridge and does not contain specifics for the demolition of the existing structure. This species could also occur in the area of the existing bridge, so this letter is intended to address potential impacts of the bridge construction and potential demolition on this species. MoDOT, Federal Highways Administration (FHWA), and U.S. Fish and Wildlife Service (FWS) have had a meeting in regards to pallid sturgeon considerations for this project. This letter represents MoDOT's effort to continue informal Section 7 Endangered Species Act consultation with the FWS for these species.

The pallid sturgeon, *Scaphirhynchus albus*, is a federally endangered fish with a distribution in Missouri that encompasses the Missouri and Mississippi Rivers and several major tributaries. The FWS and other agencies are continuing to learn more about the life history and habitat

Mr. Charlie Scott Page 2 of 4 June 15, 2006

requirements of the pallid sturgeon. This species uses a variety of habitats during the course of a year. Their preferred habitat provides a diversity of depths and velocities formed by braided channels, sand bars, sand flats, and gravel bars. Over-wintering has been documented in deep holes near wing dams along the Missouri River. In February 2006, three pallid sturgeons were captured at monitoring stations several miles downstream (between 20-40 mi) of the Paseo Bridge project area.

On March 16, 2006, MoDOT bridge inspection crews conducted a habitat survey of the footprint of the proposed bridge construction area and possible demolition area. The resulting hydrograph data was presented to Jane Ledwin, Columbia FWS Ecological Services Field Office in a meeting with MoDOT and FHWA on March 24, 2006. The enclosed hydrograph information shows that there is very little habitat diversity in the area of the existing bridge or in the project footprint for the construction of the new bridge. There is a fairly uniform substrate elevation across the stream channel, no evidence of scour holes except in the immediate area of the existing bridge pier, and no evidence of shallow water or "shelf" habitat. Ordinary high water elevation is approximately 734 feet for this reach of the Missouri River. On March 16, 2006 the surface water elevation was 714 feet. In general, depths from surface of streambed substrate ranged from six to fourteen feet across the channel, being slightly deeper in the main channel between the south bank and existing Pier #3. In the immediate area of Pier #3, depths to stream substrate varied between eleven and twenty-three feet. Most of the scour effects diminish beyond a forty-foot radius from the pier.

There are no records of pallid sturgeons captured in or near the project area. However, shovelnose sturgeons, which may use similar habitats as pallid sturgeons, have been noted near the project area in the past year. MoDOT has obtained data from the U.S. Geological Survey Columbia Environmental Research Center (Robert Jacobsen, Ph.D., research hydrologist). Six individual shovelnose sturgeons were found within eleven miles of the current project area in May 2005 (three individuals within three miles). The results did not identify the specific habitat the fish were using in the stream reach and only represent that the fish passed through the Kansas City reach of the Missouri River.

It could be assumed that pallid sturgeons use the project area for migration to suitable spawning and over-wintering areas upstream and downstream of the Kansas City, Missouri area. In consideration of this possibility, the construction of a new bridge, with any associated temporary structures in the river, potential dredging operations, demolition, and cleanup activities may have an effect on pallid sturgeons in the reach during these activities. If fish would be using or passing through this area during the possible demolition of the existing bridge, they could be disturbed by the explosions, falling debris, and associated clean-up activities. However, it is unlikely that there will be an adverse effect on this species, given the lack of habitat diversity and no records to date of use of this stream reach by pallid sturgeons.

Regardless of the presence or absence of threatened and endangered species, the U.S. Coast Guard mandates many precautions on all bridge demolitions that occur in navigable waterways. These precautions are very thorough and specific. They are intended to protect the waterway and the flora and fauna living in and around it. These precautions have been developed from experiences on many previous projects. These precautions will be put into the contract for this demolition

Mr. Charlie Scott Page 3 of 4 June 15, 2006

project as Job Special Provisions (JSPs). MoDOT will assure that the contractor abides by these JSPs. This letter briefly describes a few of these precautions, and an agreement worked out between MoDOT, FWS, and FHWA.

In order to minimize the potential impacts of this project to the waterway, one of the JSPs requires bridge spans that are dropped into the main navigational channel of the river be removed within 24 hours. Spans that are dropped outside of the main channel of the river must be removed within 48 hours. This prompt removal of the demolished material will allow any fish that may be using the area to return to normal activities promptly. If the existing bridge will be removed, the bridge piers will also have to be demolished. Regulations usually require that the concrete be removed to a level two feet below the natural bottom of the waterway. MoDOT and the U.S. Army Corps of Engineers or U.S. Coast Guard may work out and agreement to remove the concrete to a specified elevation. Immediately after each span or other obstruction is removed, the Coast Guard requires a thorough sweep of the area, including the area upstream and downstream of the bridge, to assure that all demolished materials have been removed. Methods for conducting the sweep must be approved by the U.S. Coast Guard. The contractor will also have to provide final grid soundings of the river at the grid locations of the pre-demolition soundings to verify that the river bottom has been returned to its preconstruction condition as reasonably as practicable. This will assure that any suitable habitat that may exist will be returned to its current condition before the project can be considered complete. This will NOT include reestablishing the scour hole associated with existing Pier #3.

Also, as an extra precaution to further minimize any potential impacts to pallid sturgeon or any other species that may be under the bridge, the contractor shall use millisecond delays between detonations of successive charges. This effectively reduces the total weight of explosive being detonated at a given time and thus reduces environmental impacts. Repelling charges will be used to scare fish from the area before the demolition charge is set off.

MoDOT has a Pollution Prevention Plan that will be implemented during all demolition activities. This plan, which was approved by the Missouri Department of Natural Resources, was designed to reduce suspended solids, turbidity, and downstream sedimentation that may degrade water quality and adversely impact aquatic life.

The agreement between MoDOT, FWS, and FHWA, as discussed at a joint meeting on March 24, 2006, involves monitoring during blasting and demolition activities. FWS suggested that if the existing bridge must be demolished, a team of biologist (effort organized by FWS) would be allowed to monitor the stream reach with tracking equipment for any radio tagged sturgeon (pallid or shovelnose). If any radio tagged sturgeon are in the stream reach at the time of demolition, valuable data could be collected regarding the effects of repelling charges, detonations, and falling debris on sturgeons during large river bridge demolitions. FHWA is supportive of this idea, and agrees that it should be addressed in the Environmental Impact Statement. Any contractors selected for the construction and demolition of this project will be made aware of this agreement, and will abide by requirements to coordinate blasting and demolition activities with Columbia FWS Ecological Services field office.

Mr. Charlie Scott Page 4 of 4 June 15, 2006

One possible benefit to the pallid sturgeon is being discussed with the U.S. Army Corps of Engineers. It is possible that under State/Federal Emergency Management Agency guidelines for mitigation of temporary rise due to construction activities, that an area under the new bridge near the north bank of the Missouri River will be excavated or dredged out to create shallow water habitat. This is not currently a requirement, and is not being considered for concurrence with any determination made in this Section 7 consultation. However, if it becomes a reality, it could provide potential spawning habitat for pallid sturgeon, and habitat for several migratory bird species.

One additional concern voiced by the U.S. Department of the Interior (DOI) relates to migratory birds that may be nesting on the existing bridge, and timing of bridge demolition if necessary (letter to FHWA Missouri from DOI Office of Environmental Policy and Compliance, 26 May 2006). MoDOT will continue to coordinate with the Columbia FWS Ecological Services Field Office on this issue. If bridge demolition is necessary, the DOI has recommended a survey for nesting birds (mainly swallows). If nesting migratory birds are present, DOI recommends scheduling bridge demolition outside of the nesting season (typically April 15-August 1) "to the maximum extent possible".

Based on this information, MoDOT has determined that this project is not likely to adversely affect the existence of the federally endangered pallid sturgeon (Scaphirhynchus albus). This letter is to request written concurrence from your office that the improvement project for Interstate 35/29 (The Paseo), including construction of a new bridge over the Missouri River and possible bridge demolition, described above, will not adversely impact the existence of any federally listed species or designated critical habitat.

Thank you for your expedited consideration of this request. If you have any questions please call me at (573-526-0606).

Sincerely,

Bree K. McMurray

Senior Biological Specialist

bkm

Enclosures

cc:

Mr. James Shipley- D-4 MoDOT

Mr. Bill Graham-env MoDOT

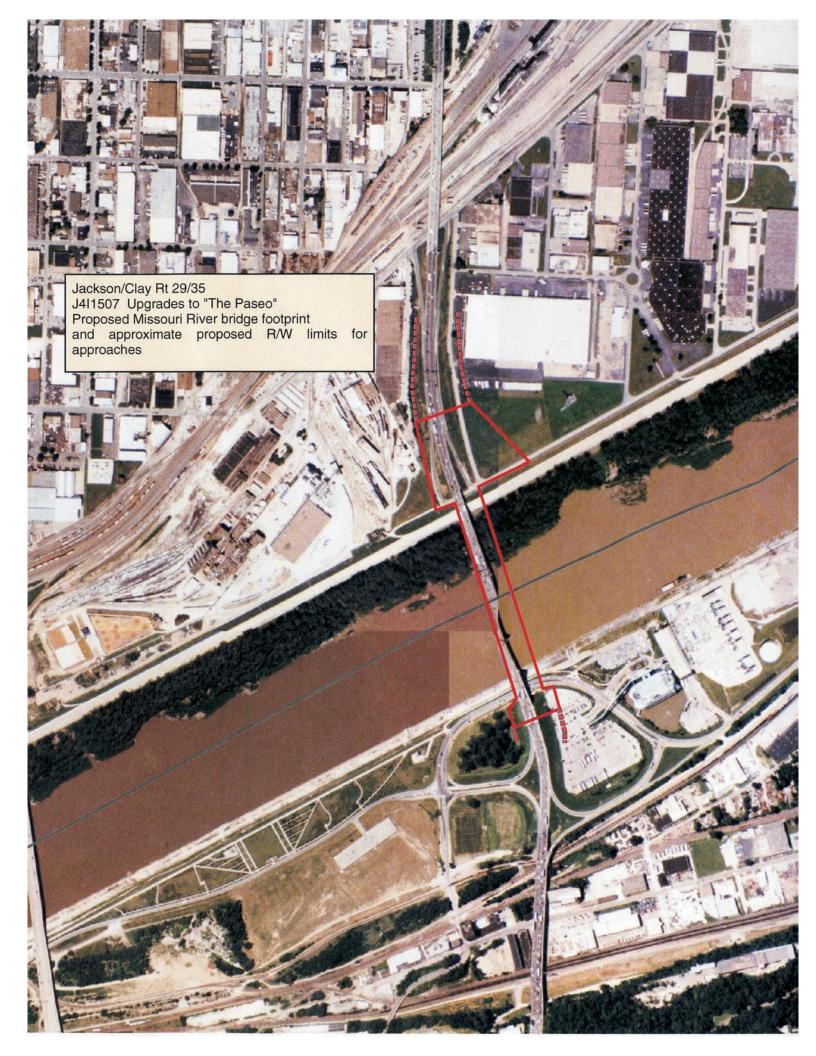
Mr. Mark Kross-env MoDOT

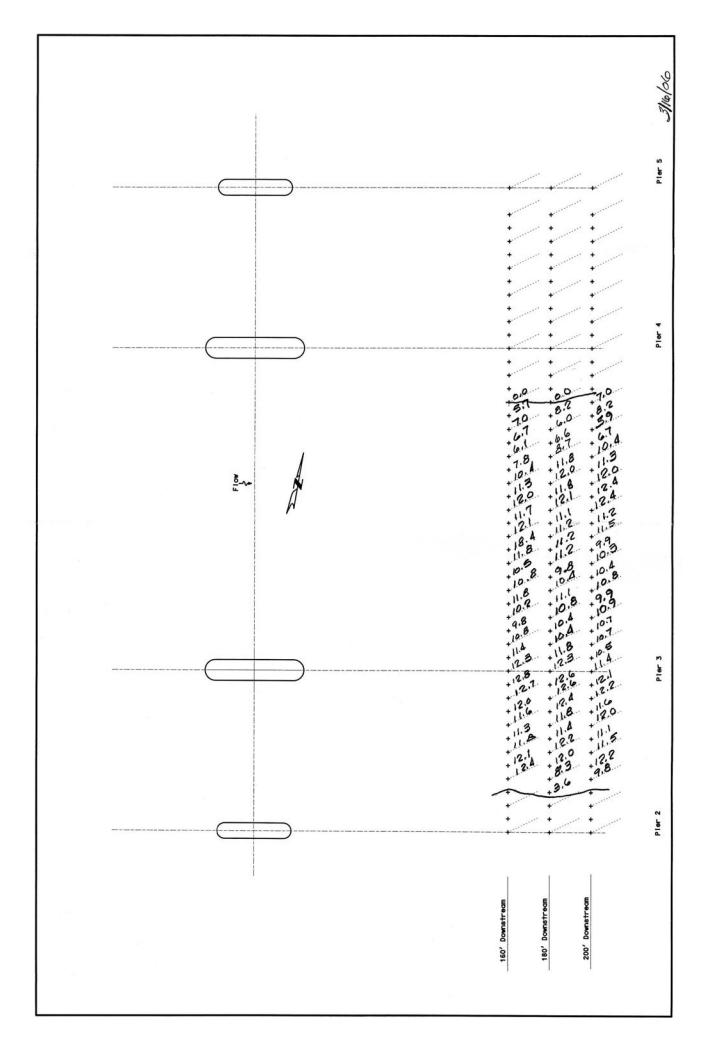
Ms. Peggy Casey-FHWA

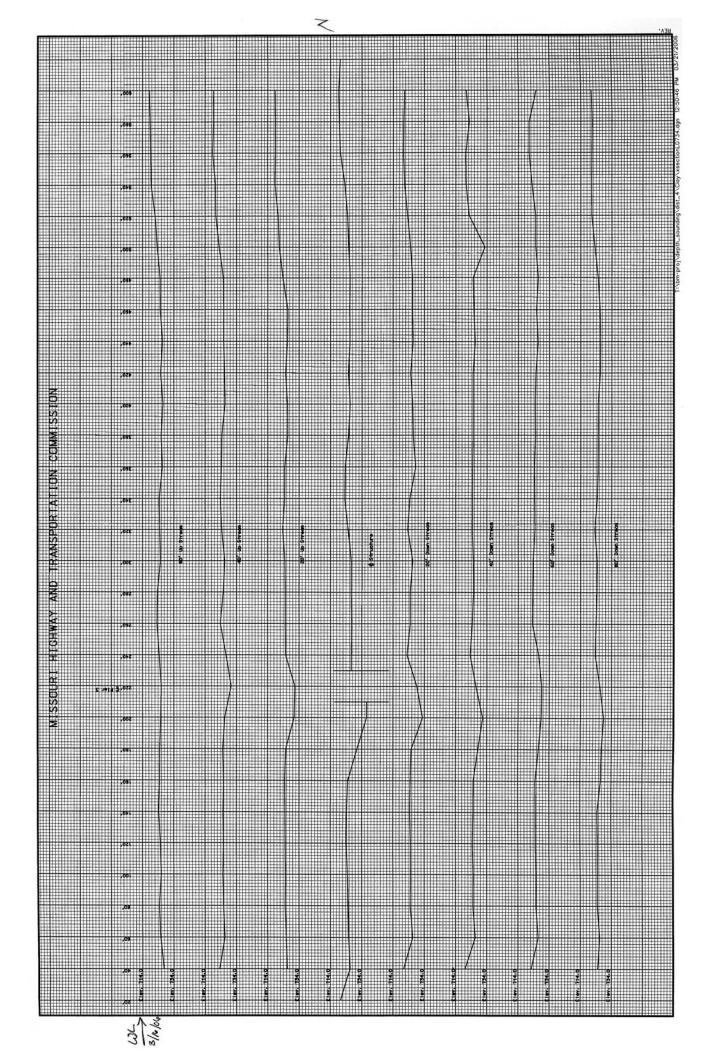
Mr. Clyde Prem- HNTB

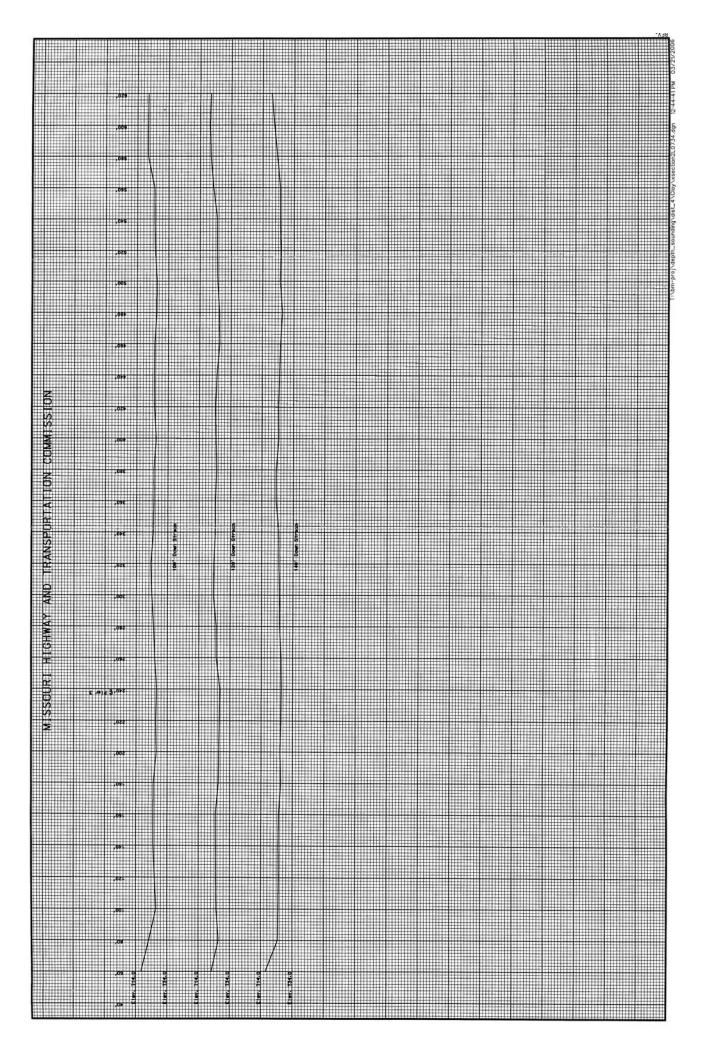
"The U.S. Fish and Wildlife Service has reviewed the Ms. Carole Hopkins-env MoDC subject proposal and accompanying information and determined that the activity as described is not likely to adversely affect federally listed species or designated critical habitat. Consequently, this concludes section 7 consultation. Please contact the Missouri Department of Conservation (573/522-4115) for state listed species of

concern'









Missouri Department of Transportation



601 West Main Street P.O. Box 270 Jefferson City, MO 65102 (573) 751-3597 Fax (573) 526-1300 www.modot.state.mo.us

August 1, 2006

Mr. Mark A. Miles Director SHPO MDNR/DSP P.O. Box 176 Jefferson City, MO 65102

Dear Mr. Miles:

Subject:

Design

Route I-29

Clay and Jackson Counties

Job No. J4I1507

North of Rt. 210 (Clay County) to north leg of Downtown Freeway Loop, KC

Cultural Resources Assessment for "The Paseo"

We are forwarding to the staff of the State Historic Preservation Office (SHPO) information regarding the Paseo, a property associated with the above referenced project. This information and attached map supplement previous investigations conducted by the Archaeological Research Center (ARC), the cultural resources consultant for the project, and presented in the draft report, "Archival Search, Architectural Survey, and Archaeological Evaluation of the Proposed I-29/35 Improvements (MoDOT Job No. J4I1507), Jackson and Clay Counties, Missouri" submitted to SHPO on January 21, 2005. MoDOT received copies of the final report from ARC on July 28, 2006 and is forwarding hard and electronic copies of the report to the SHPO with this correspondence. Because a portion of the Paseo is in the project's area of potential effects (APE), the property is being evaluated for its eligibility for the National Register of Historic Places (NRHP). The architectural and historical investigations for this project have been conducted in conjunction with an Environmental Impact Statement (EIS) for proposed improvements to Interstates 29 and 35 in Kansas City and North Kansas City, Jackson and Clay Counties. The Landmarks Commission, Kansas City Planning and Development Department, has been involved in this Section 106 consultation process (see attached e-mail). The Missouri Department of Transportation (MoDOT) also has consulted with SHPO staff regarding this resource. Historic preservation representatives of these agencies believe the portion of the Paseo that is in the APE does not fulfill eligibility criteria for listing on the NRHP. Through this letter, MoDOT is transmitting a written evaluation of the property.

Since MoDOT last forwarded project information to the SHPO (May 2005), the project area has been reduced. Proposed new right of way near the Paseo, historic Kessler Park, and Cliff Drive has been eliminated from the project (see Plate B-05 and accompanying legend). Approximately 1,000 feet of the Paseo is involved in the I-29/I-35 project area: the section north of Independence Avenue and immediately south of Missouri Avenue. North of Independence, the Paseo splits into two parts; one branch veers north/northwest very briefly before meeting I-29/I-35/Midtown Freeway, whereas the other section continues north/northeast along the southern edge of Kessler Park before joining Cliff Drive. Proposed transportation improvements to the northwest Paseo extension (the portion that links the boulevard to the interstate) are confined to the existing right of way. The northeastern tip of the Paseo was extended north to meet the western terminus of Cliff Drive at Highland Avenue. This portion of the Paseo is not involved in the APE and therefore will not be affected by the project. Cliff Drive also is outside the APE. Presently, Cliff Drive is approximately 6.5 miles in length, from Highland Avenue eastward to Belmont. The western-most section of Kessler Park (bordering the Paseo and west of Cliff Drive) was not acquired until 1966, twenty-seven years following the park's period of significance (1895-1939). During previous MoDOT/SHPO/Kansas City Landmarks consultations, this portion of the park was determined outside Kessler Park's recommended NRHP boundaries.

[&]quot;Our mission is to provide a world-class transportation experience that delights our customers and promotes a prosperous Missouri."

The Board of Park and Recreation Commissioners, City of Kansas City, classifies the Paseo as a boulevard/parkway and has investigated its historical significance as part of the Kansas City Park and Boulevard System. Previous historical surveys such as the Historic Resources of the 1893 Parks and Boulevard System (1989) and the Historic Survey of Parks and Boulevards, Kansas City, Missouri (1991) identified the location of the Paseo from 9th to 79th Street, approximately three blocks south of the present I-29/I-35 project area. The first phase of the study focused on the origin and early history of the city's park and boulevard system as it was designed in 1893. As a component of the 1893 plan, the Paseo's northern boundary was 9th Street and its southern boundary was 17th Street, although additional length was acquired from 9th to Admiral (7th Street) in 1897, and by 1899, the entire section from Admiral to 17th Street was completed. The second phase of the survey evaluated later parkway developments to 1940, which included the southern portion of the Paseo from 17th Street to 79th Street. Combined, both surveys addressed the Paseo as an element of the Kansas City park and boulevard system designed by landscape architect George Kessler. In 1920, when Kessler published his last overall plan for the city, the Paseo started at Admiral and continued roughly 8.5 miles south to the city limits (79th Street). In 1991, the parkway investigators determined that the Paseo possessed exceptional significance, especially when compared to other boulevards/parkways in the city's system, and therefore recommended surveyed portions of the Paseo (Admiral to 79th Street) eligible for listing on the NRHP. The SHPO accepted the survey results and documentation the same year.

The portion of the Paseo considered in the I-29/I-35 project's APE is approximately one block north of Admiral or 7th Street and was not included in the previous historical surveys or NRHP assessments of the parkway. This northern extension of the Paseo was not part of Kessler's original 1893 plan or even his 1920 expansion. It reflects later transportation developments and probably was excluded from the previous historical surveys because of its recent origin. Although the area north of Admiral and Paseo was replatted in 1927 to extend the Paseo past Independence Avenue, Admiral Boulevard/7th Street remained the northern terminus of the Paseo for many years. The 1950 Sanborn map reveals this northern portion of the Paseo was "unpaved" and "unopened" as were adjoining or intersecting streets such as Brownell, E. Missouri Ave., and E. 4th, 5th, and 3rd. Because it was not completed until after 1950 and is not historically associated with the Paseo, architectural historians at the Missouri Department of Transportation, the SHPO, and City of Kansas City concur that the small section of the Paseo in the I-29/I-35 project area does not constitute a contributing element to the historic Paseo. Furthermore, that particular one to two-block area where the Paseo has been extended north of Independence before terminating at I-29/I-35/Midtown Freeway has changed substantially since the 1950s, primarily the result of previous transportation improvements involving the construction of the interstate. Thus, it is concluded that this modern portion of the Paseo lacks historical significance and integrity and should remain excluded from the historical boundaries of the Paseo, 7th to 79th Street.

MoDOT requests SHPO's concurrence with this Section 106 evaluation. If you have questions please contact Toni Prawl, architectural historian, at (573) 526-3598, or e-mail toni.prawl@modot.mo.gov. Thank you for your assistance with these city and MoDOT projects.

Sincerely,

Robert L. Reeder

Historic Preservation Coordinator

tmp

Enclosures

Copies:

Mr. Doyle Childers-MDNR

Ms. Peggy Casey-FHWA (w/enclosure)

Mr. Bradley Wolf-KC (w/enclosure)

Ms. Janet Kneller-ARC

Mr. Mike Stelzleni-de (w/enclosure)

Ms. Beth Wright-4ao (w/enclosure)



Bradley Wolf <Bradley_Wolf@kcmo.org> 07/24/2006 04:31 PM

To Toni.Prawl@modot.mo.gov

CC

bcc

Subject Paseo

History:

This message has been replied to.

Your questions about the Paseo were an interesting bit of research. In 1897, The Paseo began at Admiral Blvd/7th Street and went south. This was one of the earliest sections of the Paseo. It remained this was until 1927, when an area north of Admiral and Paseo was replatted. The plat shows the Paseo extending north of Admiral past Independence Blvd. It is unclear when this portion may have been built though. The 1940 and 1951 Sanborn Maps note it as a dirt road, unimproved. My opinion is that this portion of the Paseo north of Admiral is not a contributing element, given its later construction. I hope this helps some. I have attached some supporting documents. I will probably have to send them in multiple emails.

(See attached file: 1922AerialPaseo.JPG)(See attached file: SuwannePlat1927.pdf)

Bradley Wolf
Administrator, Landmarks Commission
City Planning and Development Department
Planning, Preservation and Urban Design Division
26th Floor, City Hall, 414 East 12th St., Kansas City, MO 64106
Voice: (816) 513-2901 Fax: (816) 513-2899
Website: http://www.kcmo.org/planning.nsf/planning/home?opendocument
Please Rate Our Customer Service: http://216.62.88.52

/coldfusionapps/cityplansurvey/surveyform.cfm 1922AerialPaseo.JPG SuwannePlat1927.pdf



www.dnr.mo.gov

October 30, 2006

Dr. Robert L. Reeder Historic Preservation Manager MoDOT 601 West Main Street, P.O. Box 270 Jefferson City, Missouri 65102

Re:

SHPO Project Number: 009-CL-05 - MOA for Paseo Bridge Replacement Project, Kansas City, Clay County, Missouri (FHWA)

Dear Dr. Reeder:

Thank you for submitting the above-referenced Memorandum of Agreement (MOA) for our review and signature, pursuant to Section 106 of the National Historic Preservation Act (P.L. 89-665, as amended). We find the terms of the agreement acceptable and have signed our concurrence. We have retained a copy for our files. In addition, please ensure that all other signatories receive an original copy. Additionally, please forward one copy to the Advisory Council on Historic Preservation.

If you have any questions please write Missouri Department of Natural Resources, State Historic Preservation Office, Attn: Review and Compliance, P.O. Box 176, Jefferson City, Missouri 65102, or call Alison Dubbert at (573) 751-7958.

Sincerely,

STATE HISTORIC PRESERVATION OFFICE

mala mile

Mark A. Miles

Director and Deputy

State Historic Preservation Officer

MAM:ad

Enclosures: 2 signed copies of the MOA

c: Peggy Casey, FHWA Brad Wolf, Landmarks